

difference is that the former is payable exclusively out of the proceeds of the New York drafts, whilst the latter are payable out of them and the Baltimore draft, and I can see no reason why the dishonor of the last should place the holders of the drafts, other than Rieman & Sons, upon more unfavorable ground than they occupy with respect to the drafts on New York which were paid.

In this view of the case they are all assignees in equity of the fund received by Mr. Gibson on the New York drafts. It is true, the other creditors hold another security, but that, without their default, has turned out to be worthless. But why should this weaken their claim against the New York fund or postpone them to a creditor whose claim against, or lien upon, the fund is contemporaneous in time and created by an instrument similar to those held by them?

It is urged by the solicitor for Rieman & Sons, that the preference claimed by them is equitable, because, if the Baltimore draft had been paid, and those on New York dishonored, they would have been entirely excluded. This may be so, and probably looking alone to the orders themselves and throwing out of view the letter of instructions, is so. But why so? Simply because their order was payable out of that particular fund, and that only, whilst those held by the other parties out of that same fund and another likewise. The additional security of the Baltimore fund could not impair their claim to be paid out of the New York fund if the former proved unavailing.

The solicitor for some of the creditors goes further and says, that Rieman & Sons, by issuing an attachment from the Superior Court of Baltimore city against Finley as a non-resident debtor, have forfeited their right to any portion of the fund in question. That it amounts to a renunciation of their claim under the order and letter of instructions of the 31st of March, 1850.

It might be a sufficient answer to this view to say, that there is no evidence before the court of the attachment, or for what it issued, if it did issue. But if there was, it would not, as I think, deprive the creditor of his right to participate in the